DOCKET NO. HHD CV 23-6175575-S	:	SUPERIOR COURT
ANGELA ASHWORTH, ADMINISTRATRIX OF THE ESTATE OF CAROLINE ANNE ASHWORTH	:	JUDICIAL DISTRICT OF HARTFORD
	:	AT HARTFORD
V.	:	
TOWN OF BRANFORD, ET AL.	:	JANUARY 10, 2025

MEMORANDUM OF DECISION
RE: MOTION TO STRIKE (#155)

On August 26, 2022, defendant St. Vincent's Hospital[1] discharged Michael Mollow (Mollow) from its psychiatric facility in Westport, Connecticut. Three days earlier, Mollow had been transported to the facility from Middlesex Medical Center, where he had been committed, voluntarily at first, then involuntarily, for depression and homicidal ideations directed towards his former girlfriend, Caroline Anne Ashworth.

On the evening of August 27, 2022, Mollow stalked and then used his permitted handgun to shoot Caroline three times, killing her. He then used the gun to kill himself.

The plaintiff is Caroline's mother and the administratrix of Caroline's estate. In the plaintiff's Third Amended Complaint, she asserts seven tort counts against St. Vincent's.[2] Although the plaintiff ascribes a different legal label to each count,[3] all counts make the same essential allegations: (1) the hospital's "agents, apparent agents, servants and/or employees,

[1] The defendant's formal name is SVMC Holdings, Inc. Throughout this opinion, the court refers to the defendant as St. Vincent's Hospital, St. Vincent's or the hospital.

[2] The plaintiff also asserts claims against the Town of Branford and Mollow's estate. Those claims are not at issue.

[3] The counts are labelled: Count Two (Violation of Duty to Control and/or Warn Injury to Identifiable Third Person); Count Three (Restatement (Second) Torts § 315); Count Four (Restatement (Third) of Torts § 41); Count Five (Restatement (Second) Torts § 319); Count Six (Ordinary Negligence); Count Seven (Gross Medical Negligence); Count Eight (Common Law Medical Malpractice).

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knew, should have known or had reason to know" that Mollow was dangerous and had made specific threats to harm, even kill, Caroline;[4] (2) the hospital had a legal duty to warn or protect Caroline; and (3) the hospital breached that duty, resulting in Caroline's death. Additionally, each count includes identical specifications of negligence against the hospital, including "failing to adequately and properly care for, treat, monitor, supervise and/or control Mollow, so as to protect Caroline," and "[d]ischarging Mollow without performing adequate assessment of risk, when Mollow had expressed homicidal ideations specifically against Caroline . . . ." See generally Third Amended Complaint, Counts Two through Eight.

Before the court is St. Vincent's motion to strike Counts Two through Eight. The hospital contends that each count, whatever its label, states a medical malpractice claim, not an ordinary negligence claim. In *Jarmie* v. *Troncale*, 306 Conn. 578, 50 A.3d 802 (2012) [hereinafter *Jarmie*], the Supreme Court held that only patients may lawfully assert medical malpractice claims against a health care provider. The court's holding rests largely on the plain language of General Statutes § 52-190a (a), which refers to professional negligence "in the care or treatment *of the claimant.*"[5] Because Caroline was not a patient of St. Vincent's, the hospital argues that *Jarmie* compels the court to strike Counts Two through Eight.

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[4] Third Amended Complaint, Count Two, ¶¶ 47-48. As an institution, the hospital acts through its officers, employees, servants and agents. *Wilkins* v. *Connecticut Childbirth & Women's Center.*, 314 Conn. 709, 104 A.3d 671 (2014). The court's references to St. Vincent throughout this opinion are, therefore, references to the acts of the hospital's officers, employees, servants and agents.

[5] General Statutes § 52-190a provides in relevant part: "(a) No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the *care or treatment of the claimant.*" (Emphasis added.)

In her objection to the motion to strike, the plaintiff contends that none of the counts against St. Vincent's assert "statutory" medical malpractice claims under § 52-190a. Instead, she states that Count Eight asserts a "common law" malpractice claim, Count Seven asserts a "gross negligence claim," and the remaining counts assert ordinary negligence claims. As such, the plaintiff argues that *Jarmie* is no obstacle to her tort claims. She argues further that the Connecticut Supreme Court's decision in *Fraser* v. *United States*, 236 Conn. 625, 674 A.2d 811 (1996) [hereinafter *Fraser*] established the existence of a therapist's duty to warn or protect an identifiable third-party if the therapist knew or should have known that a patient intends to cause imminent physical harm to that individual.

As set forth below, the court determines that each count against St. Vincent's, as currently pled, alleges a malpractice claim by a nonpatient. Accordingly, the court must grant the motion to strike.

I

Two lines of cases are central to the court's resolution of St. Vincent's motion. The first concerns whether a psychotherapist has a legal duty to protect a third party from harm if the psychotherapist knows, or should know, the patient poses a danger of physical harm to the third party. The second line concerns medical malpractice claims and the circumstances under which a nonpatient can lawfully assert an ordinary negligence claim against a health care provider.

A

The Duty to Warn and/or Protect

The seminal "duty to warn" case is *Tarasoff* v. *Regents of Univ. of California*, 17 Cal. 3d 425, 131 Cal. Rptr. 14, 551 P.2d 334 (1976) [hereinafter *Tarasoff*]. In *Tarasoff*, a patient of a psychotherapist whom the defendant employed at a state hospital murdered Tatiana Tarasoff. Id.,

430. Her parents sued and alleged that, two months before Tatiana's murder, the patient had confided to the psychotherapist that he intended to kill her. Id. The defendants raised several defenses, including that they had no legal duty to warn or protect a nonpatient. Id., 431.

The Supreme Court of California ruled in favor of Tatiana's parents. "We shall explain that defendant therapists cannot escape liability merely because Tatiana herself was not their patient. When a therapist determines, *or pursuant to the standards of his profession should determine*, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances." (Emphasis added.) Id.

In a concurring and dissenting opinion particularly relevant to the present dispute, Justice Mosk wrote that he concurred in the result "only because the complaints allege that defendant therapists *did in fact predict that [the patient] would kill* and were therefore negligent in failing to warn of that danger. Thus, the issue here is very narrow: we are not concerned with whether the therapists, pursuant to the standards of their profession, 'should have' predicted potential violence; they allegedly did so in actuality. Under these limited circumstances I agree that a cause of action can be stated . . . . I cannot concur, however, in the majority's rule that a therapist may be held liable for failing to predict his patient's tendency to violence if other practitioners, pursuant to the 'standards of the profession,' would have done so. The question is, what standards? Defendants and a responsible amicus curiae, supported by an impressive body of

literature discussed at length in our recent opinion in *People* v. *Burnick* (1975) . . . demonstrate that psychiatric predictions of violence are inherently unreliable." (Emphasis added.) Id., 451.

Acknowledging the gravity of Justice Mosk's concerns, in 1985 the California General Assembly enacted a statute limiting the *Tarasoff* holding. Cal. Civ. Code § 43.92 (West). As the California courts have interpreted § 43.92, "a psychotherapist may be held liable for failing to warn a third party of a threat of harm only if the plaintiff is able to persuade the trier of fact the psychotherapist *actually believed or predicted* the patient posed a serious risk of inflicting grave bodily injury upon a reasonably identifiable victim or victims." (Emphasis added.) *Ewing* v. *Northridge Hospital Medical Center*, 120 Cal. App. 4th 1289, 1301, 16 Cal. Rptr. 3d 591, 600 (2004).

Given this limiting rule, California courts have further held that "because there is no need for expert guidance on the 'standard of care' for psychotherapists' statutory duty to warn, the court erred when it found, as a matter of law, that plaintiffs could not establish their claim without presenting expert testimony . . . . Under § 43.92, liability is not premised on a breach of the standard of care. Instead, it rests entirely on the fact finder's determination that each factual predicate is satisfied: the existence of a psychotherapist-patient relationship; the psychotherapist's actual belief or prediction that the patient poses a serious risk of inflicting grave bodily injury; a reasonably identifiable victim; and the failure to undertake reasonable efforts to warn the victim and a law enforcement agency." (Citations omitted.) Id., 1301-02.

The Connecticut Supreme Court has discussed *Tarasoff* in several decisions, starting with *Kaminski v. Fairfield*, 216 Conn. 29, 578 A.2d 1048 (1990). In a counterclaim, a defendant police officer sued the parents of an adult child with schizophrenia who injured the officer with an axe while the officer was attempting to remove the child from the parents' home. The officer

relied on *Tarasoff* to argue that the parents had a duty to warn him of their child's dangerous and violent propensities. The Supreme Court held that the police officer failed to state a claim. "*Tarasoff* is distinguishable both because the plaintiffs did not have a professional relationship with [their child] . . . and because the defendant was not a specifically identifiable victim." (Citations omitted.) Id., 37.

Six years after *Kaminski*, the Supreme Court again discussed *Tarasoff* in response to a certified question from the Second Circuit Court of Appeals. The court of appeals asked the Supreme Court to decide "whether, in the circumstances presented herein, psychotherapists undertaking the treatment of a psychiatric outpatient assumed a duty to exercise control over the patient to prevent the patient from committing an act of violence against a third person." *Fraser* v. *U.S.*, supra, 236 Conn. 626. Citing *Tarasoff* and *Kaminski*, the Supreme Court held in *Fraser* that psychotherapists "should not be held liable to third parties who are not foreseeable victims." Id., 634.

Some Superior Courts have read *Fraser* as supporting a duty to warn if a specific victim is foreseeable. See *Schlegel* v. *New Milford Hospital*, Superior Court, judicial district of Waterbury, Docket No. CV-96-0071253-S (May 9, 2000, *Sheldon, J.*) ("[t]he upshot of *Fraser* is that in Connecticut, a psychotherapist does assume a duty to control his psychiatric outpatient to prevent injury to a third person if he knows or has reason to know that his patient will cause harm to that particular person."); *Gillum* v. *Yale University*, Superior Court, judicial district of New Haven, Docket No. CV-91-0314737-S (June 27, 1996, *Blue, J.*) (court indicating that Connecticut would recognize a duty to warn on the part of a psychotherapist under the appropriate factual circumstances, i.e., where the victim is readily identifiable or a member of an identifiable class). See also *Almonte* v. *New York Medical College*, 851 F. Supp. 34 (D.Conn.

1994) (court found that plaintiffs had alleged grounds upon which to find a duty to warn imposed on psychiatrists to identifiable third parties).

This court questions whether the above decisions have properly interpreted *Fraser*, particularly in light of more recent Supreme Court decisions. In *Jarmie*, the Supreme Court said the following about *Fraser:* "The only time that we have even *contemplated* enlarging the duty of a health care provider to include a person who is not a patient was when we considered whether a psychotherapist owed a duty to a third party to control an outpatient, who was not known to have been dangerous." (Emphasis in original.) *Jarmie* v. *Troncale*, supra, 306 Conn. 593 (citing *Fraser*). "Contemplating" expanding the duty of health care providers to extend to nonpatients is a far cry from holding that such a duty exists.

Whether the Connecticut Supreme Court would actually recognize a duty to warn or control under the circumstances alleged in this case—Mollow clearly identified Caroline in his communications with the hospital's agents, servants and employees—is unknown. What is known is that the Supreme Court has counseled and "exercised restraint when presented with opportunities to extend the duty of health care providers to persons who are not their patients." Id., 592.

Whether this court must determine the full scope of the *Fraser* decision depends on whether the plaintiff's claims are ordinary negligence claims, which nonpatients may assert against health care providers, or medical malpractice claims, which nonpatients may not assert against such providers. Accordingly, the court discusses the second line of relevant decisions.

B

Medical Malpractice and Ordinary Negligence Claims by Nonpatients

In *Jarmie*, a motorist injured in a car accident sued a physician who treated the tortfeasor for a medical condition, hepatic encephalopathy, which made it unsafe for her to operate a motor vehicle. The Connecticut Supreme Court had to decide "whether a physician who fails to advise an unaware patient of the potential driving risks associated with [an] underlying medical condition breaches a duty to the victim of the patient's unsafe driving because of the failure to advise." Id., 580.

The plaintiff's complaint "[did] not purport to be grounded in either medical malpractice or common-law negligence." Id., 585. Consequently, the trial court and the Supreme Court evaluated the plaintiff's claim under both legal perspectives. "The issue is not merely one of semantics. How the complaint is characterized determines the standard under which it is reviewed. Unlike the trial court, we regard the two different approaches advocated by the parties as distinct, but, given the ambiguity in the language of the complaint and the nature of the arguments, the court properly considered whether the complaint should be stricken under both theories. Consequently, we first consider whether the trial court properly ruled that the complaint was barred under Connecticut's medical malpractice law. We then consider whether Troncale owed a duty to the plaintiff under common-law principles of negligence, *there being nothing in the relevant statutory authority or the case law of this state that preclude the plaintiff from bringing an action against the defendants on negligence grounds.*" (Emphasis added.) Id., 586.

First viewing the complaint as alleging malpractice, the Supreme Court squarely held that § 52-190a only permits patients to assert such claims. "Pursuant to [§ 52-190a] a cause of action alleging medical malpractice must be brought by a *patient* against a health care provider because

the language of the statute specifically provides that the alleged negligence must have occurred 'in the care of treatment of the claimant . . . .'" (Emphasis in original.) Id., 587.

Next viewing the complaint as alleging an ordinary negligence claim, the court squarely held that the defendant "owed no duty to the plaintiff in this case because Connecticut precedent does not support it, the plaintiff was an unidentifiable victim, public policy considerations counsel against it, and there is no consensus among courts in other jurisdictions, which have considered the issue only rarely." Id., 590-91.

What Connecticut precedents did the court examine? Several cases, including *Kaminski* and *Fraser*. That is significant. By discussing these "duty to warn" cases in the common-law negligence section of its opinion, the Supreme Court implied that it viewed them as ordinary negligence claims, even when the defendants were medical professionals who were sued for allegedly making an error in professional judgment in the context of treating a patient, as in *Fraser* (and *Tarasoff*).

This conundrum brings the court to *Doe* v. *Cochran*, 332 Conn. 325, 210 A.3d 469 (2019), another case central to the hospital's motion to strike. Doe had contracted herpes from her boyfriend (Smith) after Smith's physician incorrectly reported to him that he had tested negative for herpes. Id., 328-29. In fact, the test results were clearly and unequivocally positive. Id. Smith had gone to the physician specifically to be tested for sexually transmitted diseases (STD) because he was in a relationship with Doe and wanted to be sure she did not contract an STD from him. Id., 328. Smith shared Doe's identity with the physician. Id. After Doe contracted herpes, she sued Smith's physician, alleging in a single count complaint that he was negligent in incorrectly reporting the positive test results. Id., 329.

The defendant moved to strike the complaint. Id. He alleged that it sounded in medical malpractice and, consequently, was barred under *Jarmie* because Doe had not been his patient. Id., 330-31. Notably, Doe had attached to her complaint a certificate of good faith pursuant to § 52-190a. Id., 331. The trial court granted the motion to strike. Id., 330.

On appeal, Doe argued that "although she attached a certificate of good faith . . . out of an abundance of caution, her complaint alleges ordinary, common-law negligence rather than medical malpractice." Id., 331. The Supreme Court assumed, arguendo, that Doe's complaint could be read as alleging a malpractice claim but stated "[t]he question that we must resolve is simply whether the complaint also alleges that the defendant committed ordinary common-law negligence by permitting his office to give [the boyfriend] the wrong test results." Id., 332-33.

The court explained that "[t]o determine whether a claim against a health care provider sounds in ordinary negligence rather than (or in addition to) medical malpractice, we must review closely the circumstances under which the alleged negligence occurred . . . . [A] claim sounds in medical malpractice when (1) the defendants are sued in their capacities as medical professionals, (2) the alleged negligence is of a specialized medical nature that arises out of the medical professional-patient relationship, and (3) the alleged negligence is substantially related to medical diagnosis or treatment and involved the exercise of medical judgment . . . . In connection with an ordinary negligence claim, by contrast, the defendant's conduct is judged against the standard of 'what a reasonable person would have done under the circumstances . . . .'" (Citations omitted; internal quotation marks omitted.) Id., 334–35. Accord *Trimel* v. *Lawrence & Memorial Hospital Rehabilitation Center*, 61 Conn. App. 353, 357-58, 764 A.2d 203, appeal dismissed, 258 Conn. 711, 784 A.2d 889 (2001).

The court applied this legal test to the allegations of the plaintiff's complaint. For two reasons, the court concluded that the allegations reasonably could be understood to sound in ordinary negligence, even though the physician's error "transpired in a medical setting and . . . arose as a result of a medical diagnosis in the context of an ongoing physician-patient relationship." *Doe* v. *Cochran*, supra, 332 Conn 336. The court explained, "[f]irst, the alleged error is not one involving professional medical judgment or skill. If the defendant misread Smith's lab result, then he failed to perform what was, in essence, a simple, ministerial task." Id. "Second, regardless of whether the alleged error arose from a misreading or a miscommunication, proving that it constituted negligence would not require expert medical testimony or the establishment of a professional standard of care. A jury will not need expert testimony to determine whether the defendant's staff was negligent in leading Smith to believe that he was free of STDs when the defendant knew, or should have known, that Smith had tested positive for herpes, a contagious STD, and intended to engage in sexual activity. Such a determination is well within the ken of a lay person." Id., 337.

Having concluded that Doe's claim sounded in ordinary negligence, the court then determined that the defendant owed a duty of care to Doe, an identifiable third party, to accurately report Smith's STD test results.[6] Id., 373-74.

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[6] Three justices dissented. Notably, they agreed with the majority that the allegations of Doe's complaint sounded in ordinary negligence. However, they disagreed with the majority's holding that a doctor owes a duty of care to a nonpatient to accurately report STD test results if the doctor knows the identity of the nonpatient. The dissenting justices viewed the recognition of such a duty as inconsistent with *Jarmie*. "I conclude, consistent with *Jarmie* v. *Troncale* . . . that the defendant did not owe the plaintiff, who was not his patient, a duty of care in the present case. Given the potential ramifications of recognizing such an expanded duty of care, I would leave that potential expansion of liability to the legislature—which is better equipped than this court to make the public policy findings attendant to that expansion of liability." Id., 393 (*Robinson, C.J.*, dissenting).

St. Vincent's argues that *Jarmie* and *Doe* are dispositive of the motion to strike. Unlike the defendant's negligent reporting of STD test results in *Doe*, which did not involve an error in the exercise of professional judgment, the hospital contends that critical allegations of the Third Amended Complaint—whether hospital staff "knew or should have known" that Mollow truly intended to harm Caroline Ashworth and whether the hospital was negligent in discharging him—necessarily implicate the exercise of professional judgment. Consequently, the hospital maintains that the allegations of the Third Amended Complaint sound in medical malpractice under the legal test set forth in *Jarmie.*

The hospital also relies on a third case, *Gold* v. *Greenwich Hospital Assn.*, 262 Conn. 248, 811 A.2d 1266 (2002) [hereinafter *Gold*], which the Supreme Court cited approvingly in *Doe*. The plaintiff in *Gold* had been a caregiver for Cooke, who was a patient of the defendant hospital and a physician. Id., 250. After the hospital and physician released Cooke, Cooke assaulted the caregiver. Id., 251. The caregiver then sued, alleging that the hospital and the physician "knew or should have known that [Cooke] was a danger to others." (Internal quotation marks omitted.) Id.

The defendant and the trial court viewed the plaintiff's complaint as alleging medical malpractice. Id., 251-52. The plaintiff disclosed an expert, who subsequently testified at his deposition that he did not have sufficient information to determine the applicable standard of care and could not provide an opinion based on a reasonable medical probability. Id., 251-52. The defendants then moved for summary judgment "on the grounds that the plaintiff could not produce expert testimony . . . on the issue of the applicable standard of care, the alleged breach of that standard of care, and causation of the plaintiff's injury." Id., 252. The trial court granted the motion. Id.

On appeal, the plaintiff argued that her claim sounded in ordinary negligence, not malpractice, and, hence, she did not need expert testimony to prove her claim. Id., 252-53. The Supreme Court disagreed. "We conclude that the trial court properly characterized the plaintiff's complaint as a medical malpractice claim. The hospital and [physician] were sued in their capacities as medical professionals. The defendants' alleged negligence is of a medical nature arising out of their medical treatment of Cooke. The alleged negligence is substantially related to medical diagnosis and involved the exercise of medical judgment. The plaintiff's claim, in essence, is that she was injured as a result of Cooke's treatment and discharge from the hospital when the defendants knew or should have known that Cooke was a danger to others. The claim implicates the defendants' medical judgment in discharging Cooke without ascertaining whether her psychological condition was such that she was a danger to others, e.g., the plaintiff." Id., 255.

The Supreme Court also rejected the plaintiff's *Fraser*-based argument that "the failure of a health care provider to warn a third party of the danger posed by a patient does not require expert testimony to establish the requisite standard of care and the breach of that standard." Id. "We disagree that *Fraser* controls this case." Id., 256. "[E]ven if the plaintiff had demonstrated that she was an identifiable victim or within a zone of danger, expert testimony would still be required to establish a breach of the standard of care. Because, as a result of previous rulings in the trial court, the plaintiff had been precluded from using any expert testimony at trial, she could not possibly prevail on her claim against the defendants." Id., 257.

Although *Gold* is not squarely on point, St. Vincent's argues that the case is so strikingly similar to the present case that this court must reach the same conclusion as the Supreme Court did in *Gold*. As set forth below, the court concurs.

II

A

The court's task is to apply the relevant precedents, particularly *Jarmie*, *Doe* and *Gold* to the allegations of the Third Amended Complaint. Before doing so, however, the court examines the plaintiff's initial pleading, which sheds useful background light on the nature of the claim originally asserted.

When the plaintiff initiated this action, her three-count complaint asserted claims against the Town of Branford, St. Vincent's, and Mollow's estate. Complaint (dated Oct. 17, 2023). The single count against the hospital plainly alleged medical malpractice under the legal framework set forth in *Jarmie*, *Doe,* and *Gold.* In particular, the complaint alleged, "[t]he injuries and resulting death suffered by Caroline were caused by the failure of [the hospital], through its agents, servants, apparent agents and/or employees, including the physicians, nurses, social workers and other healthcare professionals staffing St. Vincent's, *to exercise that degree of care and skill exercised by medical professionals specializing in psychiatric and psychological care and related mental health treatment*, under all of the facts and circumstances then and there existing . . . ." (Emphasis in original.) Complaint, Count Two, ¶ 42. Pursuant to General Statutes § 52-190a, the plaintiff attached a good faith certificate to her complaint. The author of the letter opined that the hospital "deviated from the standard of care of a reasonable psychiatrist in delivering care to Michael Mollow and that this deviation from care resulted in the death of his ex-girlfriend, Caroline Ashworth." See Complaint, Exhibit C.

St. Vincent's moved to strike the complaint. Motion to Strike (docket entry no. 110). Like the present motion, the initial motion to strike argued that the count against the hospital sounded

in medical malpractice and was barred under *Jarmie* because Caroline Ashworth had not been a patient of the hospital.

The court never adjudicated the first motion to strike. Instead, the plaintiff filed a First Amended Complaint. That pleading still asserted a single count against St. Vincent's, but the count removed from paragraph 42 of Count Two any reference to the "degree of care and skill exercised by medical professionals." Instead, the amended pleading alleged, "[t]he injuries and resulting death suffered by Caroline were caused by the negligence of [St. Vincent's], through its agents, servants, apparent agents and/or employees, including the physicians, nurses, social workers and other healthcare professionals staffing St. Vincent's . . . ." First Amended Complaint, Count Two, ¶ 42. The amended pleading also deleted the good faith letter and certificate of reasonable inquiry.

The hospital then filed a motion to dismiss the First Amended Complaint on the ground that it still asserted a malpractice claim but failed to include a good faith letter required under § 52-190a. The motion to dismiss was not adjudicated. Instead, the plaintiff filed the Third Amended Complaint.[7] As already noted, that pleading asserts seven tort counts against St. Vincent's.[8]

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[7] The plaintiff previously filed a Second Amended Complaint to address a scrivener's error in a paragraph unrelated to the claims against St. Vincent's Hospital.

[8] St. Vincent's does not dispute the plaintiff's right under the Practice Book to amend her complaint. Although the court has discussed the evolution of the plaintiff's pleadings, the sole question before the court is whether the allegations of the Third Amended Complaint, standing on their own, state a legally cognizable ordinary negligence claim. In ruling on a motion to strike, the court accepts as true all well-pled factual allegations and draws all reasonable inferences from those facts in the plaintiff's favor. *Doe* v. *Cochran*, supra, 332 Conn. 333.

B

As a threshold matter, the legal labels the plaintiff has ascribed to each count of the Third Amended Complaint are irrelevant to the court's analysis of the pleadings. "[T]he interpretation of pleadings is always a question of law for the court . . . . [I]n determining the nature of a pleading filed by a party, we are not bound by the label affixed to that pleading by the party." (Citation omitted; internal quotation marks omitted.) *Votre* v. *County Obstetrics & Gynecology Group, P.C.*, 113 Conn. App. 569, 567, 966 A.2d 813, cert. denied, 292 Conn. 911, 973 A.2d 661 (2009). In a lawsuit against a healthcare professional, the question is whether a "claim's underlying factual allegations require proof of a deviation from the professional standard of care applicable to that specific profession." (Internal quotation marks omitted.) Id., 579. If the answer to that question is yes, the complaint asserts a malpractice claim and must comply with the requirements of § 52-190a and relevant caselaw governing such claims.[9]

The plaintiff attempts to side-step § 52-190a and relevant caselaw (like *Jarmie*) by arguing that she has not pled a "statutory" malpractice claim in her complaint. "The *sole* basis upon which [the hospital] moves to strike Counts Two through Eight is its assertion that all these counts allege statutory medical malpractice claims brought by a non-patient. According to [the hospital], such claims are not cognizable under Connecticut law. *The foundational error in [the hospital's] argument is its incorrect statement that the plaintiff has alleged only statutory medical malpractice claims.*" (Emphasis added.) Objection to SVMC Holdings, Inc.'s Motion to Strike and Memorandum in Opposition (docket entry no. 160), p. 2.

[9] The court also gives no dispositive weight to the fact that the plaintiff appended a § 52-190a good faith certificate to the Third Amended Complaint. The court credits the plaintiff's assertion that she filed the certificate out of an abundance of caution and without waiving her right to argue that the certificate is unnecessary in this case. *Doe* v. *Cochran*, supra, 332 Conn. 331.

The fatal flaw in the plaintiff's argument is that there is no legal distinction under Connecticut law between "statutory" medical malpractice and "common law" medical malpractice. "[A]lthough procedurally circumscribed by statute, medical malpractice claims are brought pursuant to the common law." *Greenwald* v. *Van Handel*, 311 Conn. 370, 383, 88 A.3d 467 (2014). In other words, § 52-190a imposes certain requirements on a party asserting a traditional common law medical malpractice claim; it does not create a statutory cause of action separate and independent from the common law claim. Accordingly, the court rejects the plaintiff's argument that any count of the Third Amended Complaint, including Count Eight, asserts a cause of action for "common law" medical malpractice unencumbered by the requirements of § 52-190a and relevant case law, including *Jarmie*.[10]

C

Legal labels aside, the court must still decide whether the specific factual allegations of Counts Two through Eight sound in medical malpractice or in ordinary negligence.

Initially, all seven counts have the same basic structure. Each count begins by alleging that the hospital "knew, should have known or had reason to know" certain facts about Mollow's mental state and his intent, desire or propensity to harm or kill Caroline. Third Amended

[10] The plaintiff cites to Justice Eveleigh's dissenting opinion in *Jarmie*. He argued that the Supreme Court had the inherent authority to recognize a new common law cause of action for malpractice that *nonpatients* could assert against health care providers. *Jarmie*, supra, 306 Conn. 638-39. The Supreme Court appeared to do just that only three years after *Jarmie*, in *Squeo* v. *Norwalk Hospital Assn.*, 316 Conn. 558, 113 A.3d 932 (2015). In *Squeo*, the court recognized a claim for bystander emotional distress based on witnessing medical malpractice resulting from gross medical negligence, i.e., medical negligence so obvious to a layperson that expert testimony is not required to establish a breach of the standard of care. Id., 579-81. The court discusses *Squeo* and its implications for this case in Part II.D of this opinion.

Complaint, Count Two, ¶¶ 46-49;[11] Count Three, ¶ 51;[12] Count Four, ¶ 51;[13] Count Five, ¶ 52;[14] Count Six, ¶ 51;[15] Count Seven, ¶ 51;[16] Count Eight, ¶ 51.[17]

Next, each count alleges eleven identical specifications of negligence: "[The hospital] failed, in one or more of the following ways, to exercise reasonable care under all of the facts then and there present to prevent Mollow from doing harm to or killing Caroline: a. *Failing to adequately and properly* care for, treat, monitor, supervise and/or control Mollow, so as to protect Caroline from Mollow causing her harm or death; b. *Failing to take reasonably*

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[11] "46. Prior to Mollow's discharge on August 26, 2022, SVMC, its agents, apparent agents, servants and/or employees, knew, should have known or had reason to know that Mollow had a history of and/or propensity to cause harm to Caroline. 47. Prior to Mollow's discharge on August 26, 2022, SVMC, its agents, apparent agents, servants and/or employees, knew, should have known or had reason to know that Mollow had expressed specific threats of causing bodily harm to, or possibly the death of, Caroline. 48. Prior to Mollow's discharge on August 26, 2022, SVMC, its agents, apparent agents, servants and/or employees, knew, should have known or had reason to know that Mollow had the means to cause bodily harm to, or possibly the death of, Caroline. 49. Prior to Mollow's discharge on August 26, 2022, SVMC, its agents, apparent agents, servants and/or employees, knew, should have known or had reason to know that Mollow desired to cause bodily harm to, or possibly the death of, Caroline, who was Mollow's readily identifiable individual target." Count Two, ¶¶ 46-49.

[12] "At all relevant times herein, SVMC, its agents, apparent agents, servants and/or employees, knew, had reason to know or should have known that Mollow posed a serious danger of violence to Caroline, the identifiable, foreseeable victim of said danger." Count Three, ¶ 51.

[13] Paragraph 51 of Count Four is identical to paragraph 51 of Count Three.

[14] "At all relevant times herein, SVMC, its agents, apparent agents, servants and/or employees, knew, had reason to know or should have known that Mollow was likely to cause bodily harm to Caroline, Mollow's readily identifiable, foreseeable target, if Mollow was not controlled." Count Five, ¶ 52.

[15] "At all relevant times herein, SVMC, its agents, apparent agents, servants and/or employees, knew, had reason to know or should have known that Mollow was likely to cause bodily harm to Caroline, Mollow's readily identifiable, foreseeable target." Count Six, ¶ 51.

[16] Paragraph 51 of Count Seven is identical to paragraph 51 of Count Six.

[17] "At all relevant times herein, SVMC, its agents, apparent agents, servants and/or employees, knew, had reason to know or should have known that Mollow would or could cause bodily harm to Caroline, Mollow's readily identifiable, foreseeable target." Count Eight, ¶ 51.

necessary actions to control Mollow to prevent him from causing harm to or killing Caroline; c. *Prematurely* discharging Mollow from St. Vincent's when the PEC had not expired, Mollow was willing to stay in the hospital, and treatment for his depression, sleep disorder and homicidal ideations towards Caroline had not been *adequately treated*; d. Failing to contact collateral sources to verify information provided by Mollow to St. Vincent's staff; e. Discharging Mollow without performing *adequate assessment of risk*, when Mollow had expressed homicidal ideations specifically against Caroline, when Mollow owned firearms and Mollow had prior domestic abuse occurrences directed toward Caroline; f. *Failing to properly assess* the effects of Mollow's alcohol use and use of Xanax 'bought off the street'; g. *Failing to adequately treat* Mollow's intrusive thoughts, especially such thoughts of harming or killing Caroline or hoping others would do so; h. *Failing to properly titrate* medications provided by St. Vincent's staff to Mollow as of the time of discharge; i. Discharging Mollow under his own care with a Discharge Plan for Mollow to follow up with his primary care physician for medical management and to attend an appointment with a social worker named 'Sandy Wolf' on August 31, 2022, five days after discharge, without discharging physician or any of St. Vincent's staff speaking with Sandy Wolf; j. *Failing to determine how Mollow would act* upon discharge if he were to see Caroline, or if his intrusive thoughts against Caroline returned; k. *Failing to use proper available resources* and measures to contact Caroline to warn her of Mollow's homicidal ideations directed specifically at Caroline." (Emphasis added.) Count Two, ¶ 51; Count Three, ¶ 54; Count Four, ¶ 53; Count Five, ¶ 54; Count Six, ¶ 53; Count Seven, ¶ 52; Count Eight, ¶ 52.

When read in the context of the Third Amended Complaint as a whole, the only reasonable interpretation of the plaintiff's specifications of negligence is that they are allegations of medical malpractice under the legal test framework of *Jarmie* and *Doe*. First, the plaintiff has

sued St. Vincent's for the actions of its agents, servants and employees in their professional capacities. Second, the alleged negligence is of a specialized nature that arises out of a medical professional-patient relationship. Third, the alleged negligence is substantially related to medical diagnoses or treatment of Mollow and involves the exercise of medical judgment. *Jarmie*, 306 Conn. 588. Accord *Trimel* v. *Lawrence & Memorial Hospital Rehabilitation Center*, supra, 61 Conn. App. 357-68.

This case is nothing like *Doe*, where the Supreme Court determined that the defendant physician's mistake did not involve the exercise of professional medical judgment or skill and could be proved without expert medical testimony. Those determinations were central to the court's holding that the plaintiff's claim sounded in ordinary negligence and, therefore, was not barred under *Jarmie*. Rather, as in *Gold*, expert testimony would be essential to proving the plaintiff's specifications of negligence in this case.

The court reaches the same conclusion with respect to most of the plaintiff's allegations concerning what the hospital knew or should have known about Mollow's intentions, desires or propensity to physically harm or kill Caroline. Allegations that the hospital "knew, had reason to know or should have known" that Mollow "posed a serious danger of violence to Caroline," or that Mollow "was likely to cause bodily harm to Caroline" necessarily implicate the exercise of professional judgment by the hospital's medical staff, particularly its psychiatrists. A psychotherapist must assess the seriousness of a patient's threatening statements or ideations to determine whether a patient in fact poses a risk of imminent harm to a third party. Whether a psychotherapist exercised their professional judgment "reasonably" in a particular case is the quintessential medical malpractice issue that requires expert testimony in most cases. The

plaintiff's deletion of any reference to professional standards of care in the Third Amended Complaint does not change the essential nature of the allegations.[18]

D

Count Seven of the Third Amended Complaint warrants separate discussion. The plaintiff premises that count, labelled "Gross Medical Negligence," on *Squeo* v. *Norwalk Hospital Assn.*, 316 Conn. 558, 113 A.3d 932 (2015). [hereinafter *Squeo*], decided three years after *Jarmie*. In *Squeo*, the Supreme Court recognized a common law cause of action for bystander emotional distress resulting from medical malpractice. The court only cited *Jarmie* once in its opinion, for the proposition that *Jarmie* "eschew[ed] any 'per se rule that [third-party tort] claims are categorically barred because of the absence of a physician-patient relationship . . . .'" Id., 574.

At first blush, the facts of *Squeo* seem to bring the case squarely within *Jarmie*'s holding that nonpatients cannot bring medical malpractice claims against health care providers. The plaintiffs were the parents of Stephen Squeo, who had been admitted to Norwalk Hospital for an emergency psychiatric examination. Stephen committed suicide thirty-five minutes after the hospital discharged him. In their lawsuit, his parents, in their capacity as fiduciaries of Stephen's estate, asserted a malpractice claim against the hospital. In their personal capacities, they asserted

[18] The allegations in paragraphs 46-48 of Count Two are different. Those paragraphs allege that the hospital knew or should have known of certain objective facts that did not involve the exercise of professional judgment. For example, paragraph 46 alleges that the hospital knew or should have known that Mollow had "a history of and/or propensity to cause harm to Caroline." Similarly, paragraph 47 alleges that the hospital knew or should have know that Mollow had "expressed specific threats of causing bodily harm" to Caroline. However, because the specifications of negligence in Count Two allege medical malpractice, the court concludes that Count Two as a whole sounds in malpractice, not ordinary negligence.

bystander emotional distress claims based on the hospital's alleged malpractice in discharging Stephen.

Notwithstanding *Jarmie*, the court held that "a bystander to medical malpractice may recover for the severe emotional distress that he or she suffers as a direct result of contemporaneously observing gross professional negligence such that the bystander is aware, at the time, not only that the defendant's conduct is improper, but also that it will likely result in the death of or serious injury to the primary victim." Id., 580-81. "We believe that such a rule strikes an appropriate balance. It permits recovery by those traumatized from witnessing vulnerable loved ones seriously injured by gross misconduct on the part of health care providers. At the same time, the rule recognizes that laypeople are not qualified to assess whether most types of medical judgments and procedures meet the relevant standard of care. It thus avoids unnecessarily multiplying claims and minimizes interference with the provider-patient relationship." Id., 580.

The plaintiff argues that the gross negligence claim asserted in Count Seven of the Third Amended Complaint states a legally sufficient cause of action under *Squeo*. The court is not persuaded. *Squeo* did not create a general, stand alone, cause of action for gross negligence. Indeed, no such claim exists under Connecticut law. "[G]ross negligence has never been recognized in this state as a separate basis of liability in the law of torts. We have never recognized degrees of negligence as slight, ordinary, and gross in the law of torts." (Internal quotation marks omitted.) *Matthiessen* v. *Vanech*, 266 Conn. 822, 833 n.10, 836 A.2d 394 (2003). "Connecticut does not recognize degrees of negligence and, consequently, does not recognize the tort of gross negligence as a separate basis of liability." *Hanks* v. *Powder Ridge Restaurant Corp.*, 276 Conn. 314, 337, 885 A.2d 734 (2005). Rather, *Squeo* recognized a narrow

exception to the *Jarmie* rule for cases alleging bystander emotional distress claims based on instances of medical malpractice that are obvious to a layperson, thus obviating the need for expert medical testimony on standard of care issues.[19]

Although the holding of *Squeo* is narrow, the decision leaves the legal door open, however slightly, for judicial recognition of other ordinary negligence claims rooted in medical malpractice. Fairly read, the plaintiff's objection to St. Vincent's motion to strike invites the court to recognize her "duty to warn" claim as sufficiently akin to a *Squeo* bystander emotional distress claim, such that her claim should survive the motion to strike.

The court declines the plaintiff's invitation for two reasons. First, because the Supreme Court has counseled restraint when asked to extend the legal duties of medical professionals to nonpatient third parties, a Superior Court should be especially reluctant to recognize a new legal duty in the first instance. Second, *Squeo* was central to the disagreement between the majority

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[19] The court admits to having difficulty reconciling *Squeo* with *Jarmie* and *Doe*. *Jarmie* held that only patients can assert medical malpractice claims against health care providers but nonpatients may assert ordinary negligence claims against them, subject to customary legal requirements in negligence cases, i.e., establishing the existence of a legal duty, breach, causation, etc. *Jarmie* also articulated the legal test for distinguishing between malpractice and ordinary negligence cases. Under that test, the allegations supporting the bystander emotional distress claim in *Squeo* seem to allege a malpractice claim. As such, that claim should have been barred under *Jarmie* because the plaintiffs were not patients of the defendant. Nevertheless, the Supreme Court apparently viewed the emotional distress claim as sounding in ordinary negligence. Perhaps it did so because the court also limited the emotional distress claim to instances in which the malpractice was so obvious that no expert testimony would be required. Yet even so, the claim still required proof that a medical professional erred in exercising his professional judgment, which proof is a key element of the test for characterizing a claim as alleging medical malpractice.

By contrast, *Doe* held that the duty to accurately report STD test results was an ordinary negligence claim because the alleged negligence (misreporting test results) did not "involv[e] professional medical judgment or skill." *Doe* v. *Cochran*, supra, 332 Conn. 336. That makes sense to the court. Under that test, however, the allegations in *Squeo* do not sound in ordinary negligence.

Of course, *Squeo*, *Jarmie* and *Doe* are all binding precedent on this court. The court's observations about *Squeo* are intended only to underscore the difficulty of distinguishing between medical malpractice and ordinary negligence claims.

and dissenting justices in *Doe*. The majority relied on *Squeo* to support its recognition of duty to accurately report STD test results to nonpatients; the dissent worried that recognizing yet another exception to the general rule announced in *Jarmie* would "support further expansions of liability in other contexts." *Doe*, supra, 332 Conn. 379 n.2. Given this disagreement, the court hesitates to read *Squeo* expansively.

E

In conclusion, the court determines that Counts Two through Eight of the Third Amended Complaint sound in medical malpractice, not ordinary negligence. Because Caroline Ashworth was not a patient of St. Vincent's Hospital, *Jarmie* bars the plaintiff's malpractice claims as a matter of law.

Practice Book § 10-44 affords the plaintiff the right to replead after the granting of a motion to strike. Accordingly, it behooves the court to be clear about what it has *not* decided in this opinion.

The court has not decided that all "duty to warn" cases against health care providers are necessarily medical malpractice cases. For example, as discussed in Part I.A, the California statute that modified *Tarasoff* permits liability only when the psychotherapist "*actually believed or predicted* the patient posed a serious risk of inflicting grave bodily injury upon a reasonably identifiable victim or victims." *Ewing* v. *Northridge Hospital Medical Center*, supra, 120 Cal. App. 4th 1301. Under that legal standard, "liability is not premised on a breach of the standard of care. Instead, it rests entirely on the fact finder's determination that each factual predicate is satisfied: the existence of a psychotherapist-patient relationship; the psychotherapist's actual belief or prediction that the patient poses a serious risk of inflicting grave bodily injury; a

reasonably identifiable victim; and the failure to undertake reasonable efforts to warn the victim and a law enforcement agency." Id., 1301-02.[20]

Nor has the court decided whether a health care provider owes an identifiable nonpatient a duty to warn/control against even "actually believed or predicted harm" by a patient. The court need only resolve that issue, one way or the other, if it is presented with factual allegations that sound in ordinary negligence.

III

For the foregoing reasons, St. Vincent's motion to strike Counts Two through Eight of the Third Amended Complaint is GRANTED.

Daniel J. Klau, Judge

[20] Notably, General Statutes §§ 52-146d-f, which codifies the psychiatrist-patient privilege, employs a similar standard to define when a psychiatrist is permitted, but not required, to disclose confidential patient communications. Section 52-146f provides in relevant part: "Consent of the patient shall not be required for the disclosure or transmission of communications or records of the patient in the following situations as specifically limited: . . . (2) Communications or records may be disclosed when the psychiatric mental health provider *determines* that there is substantial risk of imminent physical injury by the patient to himself or others or when a psychiatric mental health provider . . . ." (Emphasis added.)

This court cannot imagine the state Supreme Court recognizing an affirmative duty to warn identifiable third parties on a lesser factual showing than the General Assembly established in § 52-146f (2) for psychotherapists to reveal confidential communications without a patient's consent. Compare *Jarmie* v. *Troncale*, supra, 306 Conn. 602 (noting that proposed duty to warn would conflict with public policy expressed in General Statutes).

Checklist for Clerk

Docket Number: HHD-CV23-6175575-S

Case Name: Angela Ashworth, Administratrix of the Estate of Caroline Anne Ashworth v. Town of Branford, Et Al.

Memorandum of Decision dated: 1/10/25

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

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HHD-CV23-6175575-S **ASHWORTH, ANGELA, ADMINISTRATRIX OF THE ESTATE OF v. TOWN OF BRANFORD, CONNECTICUT Et Al**

Prefix: HD3 **Case Type:** T90 **File Date:** 10/19/2023 **Return Date:** 11/21/2023

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help | Exhibits

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Information Updated as of: 01/10/2025

Case Information

Case Type: T90 - Torts - All other
Court Location: HARTFORD JD
List Type: JURY (JY)
Trial List Claim: 02/02/2024
Last Action Date: 12/16/2024 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**ANGELA ASHWORTH ADMINISTRATRIX OF THE ESTATE OF CAROLINE ANNE ASHWORTH** **Attorney:** KOSKOFF KOSKOFF & BIEDER PC (032250) File Date: 02/05/2024 350 FAIRFIELD AVENUE BRIDGEPORT , CT 06604		Plaintiff
D-01	***TOWN OF BRANFORD, CONNECTICUT*** **Attorney:** KARSTEN & TALLBERG LLC (424030) File Date: 11/21/2023 500 ENTERPRISE DRIVE SUITE 4B ROCKY HILL , CT 06067 **Attorney:** PHV FAUST RANDY S 10/27/15 (437099) File Date: 08/13/2024 TYSON & MENDES 420 LEXINGTON AVE #2800 NEW YORK , NY 10017		Defendant
D-02	**SVMC HOLDINGS, INC.** **Attorney:** STOCKMAN O'CONNOR PLLC (005059) File Date: 11/21/2023 32 CHURCH HILL ROAD SUITE C201 NEWTOWN , CT 06470 **Attorney:** TODD EDWARD GILBERT (436060) File Date: 12/28/2023 1 ENTERPRISE DRIVE SUITE 310 SHELTON , CT 06484		Defendant
D-03	**CHRISTOPHER J. DONLIN ADMINISTRATOR OF THE ESTATE OF MICHAEL MOLLOW** **Attorney:** BERNADETTE MARY KEYES (407274) File Date: 11/15/2023 420 EAST MAIN STREET SUITE 15, BLDG. 3 BRANFORD , CT 06405 **Attorney:** MILANO & WANAT (406611) File Date: 11/28/2023 471 EAST MAIN STREET BRANFORD , CT 06405 **Attorney:** KIRSCHBAUM LAW GROUP LLC (433768) File Date: 01/30/2024 935 MAIN STREET		Defendant

LEVEL A
MANCHESTER , CT 06040

L-01 MOTION FOR CONSOLIDATION (#162.00)
Attorney: RENEHAN & ROSSETTI LLP (443804)
134 HIGHLAND AVENUE
WATERBURY , CT 06708

File Date: 08/05/2024

For Notice Only or Proposed Intervenor

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Motions / Pleadings / Documents / Case Status

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	10/19/2023	P	**SUMMONS**	
	10/19/2023	P	**DOCUMENT SEALED**	
	11/15/2023	D	**APPEARANCE** Appearance	
	11/21/2023	D	**APPEARANCE** Appearance	
	11/21/2023	D	**APPEARANCE** Appearance	
	11/28/2023	D	**APPEARANCE** Appearance	
	12/28/2023	D	**APPEARANCE** Appearance	
	01/30/2024	D	**APPEARANCE** Appearance	
	02/05/2024	P	**APPEARANCE** Appearance	
	08/05/2024		**APPEARANCE** L-01	
	08/13/2024		**APPEARANCE** PHV D-01	
100.30	10/19/2023	P	**RETURN OF SERVICE**	No
101.00	11/15/2023	D	**MOTION FOR PROTECTIVE ORDER**	No
102.00	11/16/2023	D	**CASEFLOW REQUEST (JD-CV-116)** *RESULT:* Denied 11/16/2023 HON SUSAN COBB	No

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